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September 18, 2018

Stephanie Kercheval
EPA Region 10
Freedom of Information Officer
1200 Sixth Avenue, ETPA-124
Seattle, WA 98101

Via electronic mail: r10foia@epa.gov and Kercheval.Stephanie@epa.gov

Dear Ms. Kercheval,

On behalf of Minahan Muther Klinger, PC, and American Federation of Government Employees (AFGE), Local 1110, pursuant to 5 U.S.C. §§ 552 *et seq.* and 40 C.F.R. Part 2, our firm requests copies of the following records and information pertaining to the bargaining unit employees, at the EPA Region 10 facility in Seattle, Washington:

- (1) Copies of all of the position descriptions¹ of employees in Region 10 of the U.S. Environmental Protection Agency.

Please note the Union is not seeking personal information from these documents. All the Union is seeking is the redacted official documents that were issued to the persons above. We have attempted to provide sufficient identifying information concerning the records covered by this request.

If you determine that any portion of this request does not reasonably describe the records sought, please notify us of that determination so that an attempt can be made to restate the request in a manner that will rectify any deficiency that you believe exists.

It is possible that some of the records requested below may be covered by the Privacy Act. There should be no concern from a legal standpoint because disclosure to a union with a representational need for the records is within the "routine use" exception to the Privacy Act. *Dept. of Air Force v. FLRA*, 104 F. 3d

¹ Requestor prefers pdf versions of this publicly available information to keep search and duplication time to a minimum, if available.

1396 (D.C. Cir. 1997). However, from a practical perspective, if redaction of any personal information will not compromise the Union's ability to understand and use the record, the Agency is welcome to do so.

Furthermore, please note that we do not believe that any of the information we have requested is subject to any legitimate claim of privilege. Thus, if you decline to produce any of this material to us within time frame² specified in 40 C.F.R. Part 2, our intention is to file an appeal as well as any subsequent suit in U.S. District Court as may be necessary.

Fee Waiver Request

Pursuant to 40 C.F.R. § 2.107, we request a fee waiver because AFGE Local 1110 is a not for profit organization with no commercial interest in the information being requested. Likewise, this request is being made to learn information necessary to determine whether the Agency has been properly complying with the Master Labor Agreement and/or Title VII of the Civil Rights Act of 1964.

Should you have any questions regarding this request, please contact me directly.

Respectfully Submitted,

Joshua L. Klinger, Esq.
Attorneys for the Local

² As the Agency is well aware, merely acknowledging the request during the statutory time period is not sufficient. See 5 U.S.C. 552(a)(6)(A)(i) (2006), amended by the OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524' FOIA Update, Vo. XIII, No. 3, at 5. A "predictable agency workload" of FOIA request does not qualify as "exceptional circumstances...unless the Agency demonstrates reasonable progress in reducing its backlog of pending requests." 5 U.S.C. 552(a)(6)(C)(ii); see e.g., *Fiduccia v. DOJ*, 185 F.3d 1035, 1042 (9th Cir 1999)(finding no exceptional circumstances when only a slight upward creep in the caseload caused backlog that agency claimed resulted from employee cutbacks and rejection of its budget requests).